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D.B., Appellant)	
)	
and)	Docket No. 09-1138
)	Issued: November 25, 2009
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Sheridan, WY, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

On March 24, 2009 appellant filed a timely appeal from a December 11, 2008 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's medical benefits effective December 11, 2008 on the grounds that the accepted conditions had ceased or were no longer causally related to the May 28, 2008 employment injury.¹

FACTUAL HISTORY

On June 1, 2008 appellant, then a 25-year-old nursing assistant, filed a Form CA-1, traumatic injury claim, alleging that on May 28, 2008 she injured her back while helping a patient. She stopped work that day and returned to limited duty on June 16, 2008.² A July 3, 2008 magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated a minimal disc bulge at L5-S1 and on July 10, 2008 she had an epidural injection. In a July 22, 2008 report, Dr. Ian J. Hunter, an attending Board-certified internist, noted the history of injury and MRI scan findings. He advised that appellant could return to restricted duty with limitations on her physical activity.³ On August 14, 2008 appellant filed a Form CA-7, claim for compensation, for the period July 20 to August 18, 2008. In an August 14, 2008 report, Dr. John F. Ritterbusch, a Board-certified orthopedic surgeon, noted a positive straight leg raising examination, diagnosed degeneration of lumbosacral intervertebral disc, and advised that appellant was not improving and was not likely to be able to return to her usual job. He recommended a functional capacity evaluation.

By letter dated August 14, 2008, the employing establishment informed the Office that appellant was off work four days after the May 28, 2008 claimed injury, and then returned to work with restrictions, until she stopped on July 19, 2008. On August 18, 2008 the Office accepted that appellant sustained employment-related lumbar sprain, lumbar L5 radiculopathy, and lumbar L5 disc bulge. Appellant filed an additional CA-7 claim for the period August 18 to September 5, 2008. By report dated August 27, 2008, Dr. Hunter advised that appellant continued to have severe pain and could no longer work in her previous position. He noted that she had epidural injection treatment and ongoing physical therapy and medication management for the radiculopathy but had not progressed, and recommended that she be off work until January 1, 2009, when he would reassess her condition.

¹ The record indicates that appellant was never in the receipt of wage-loss compensation for the May 28, 2008 employment injury. *See discussion infra*. She would therefore have the burden of proof to establish any periods of employment-related disability. *Jaja K. Asaramo*, 55 ECAB 200 (2001). In a November 3, 2008 decision, the Office denied appellant's claim for compensation for the period July 20 to September 5, 2008. On November 17, 2008 appellant requested a hearing of that decision that was held on March 16, 2009. By decision dated June 4, 2009, an Office hearing representative affirmed the November 3, 2008 decision denying disability compensation for the period July 20 to September 5, 2008. Appellant filed her appeal of the December 11, 2008 termination decision with the Board on March 24, 2009 and has not filed an appeal of the June 4, 2009 hearing representative's decision.

² Appellant was on vacation in Mexico from June 5 to 15, 2008. She did not receive wage-loss compensation. *See note 6, infra*. The physical demands of the nursing assistant position advised that the work involves long periods of moving about, regular and recurring bending, pushing, pulling, stooping, stretching, lifting, repositioning patients and similar activities.

³ Appellant also had chiropractic treatment in July 2008.

In an August 28, 2008 letter, the employing establishment informed the Office that appellant had an additional job and that multiple jobs were available within appellant's restrictions. A September 3, 2008 functional capacity evaluation demonstrated that appellant could work six to seven hours daily with sitting of five to six hours, standing of one to two hours, and walking of two to three hours, with weight restrictions provided for many activities.⁴ By letter dated September 9, 2008, appellant explained that she could not return to work due to back pain. She confirmed that she had a second job as a companion for an elderly lady for 35 to 40 hours a week. In a September 16, 2008 work capacity evaluation, Dr. Ritterbusch noted the accepted conditions and advised that appellant could not perform her usual job but could perform duties in accordance with the functional capacity evaluation. He ordered physical therapy treatment and indicated that appellant had reached maximum medical improvement. On September 26, 2008 Dr. Ritterbusch advised that appellant reported that the functional capacity evaluation caused increased pain and that her home health job required very little physical activity. By letter dated September 26, 2008, the employing establishment noted that appellant was offered a temporary restricted-duty position, and reported for work on September 18, 2008 but immediately left for physical therapy and due to babysitting concerns. Appellant did not return.

In September 2008, the Office referred appellant to Dr. Allan R. Wilson, Board-certified in orthopedic surgery, for a second opinion evaluation. By report dated October 8, 2008, Dr. Wilson noted the history of injury, his review of appellant's medical records and statement of accepted facts, and appellant's complaint of low back, left leg and right buttock pain. Physical examination findings included a symmetrical gait and noted that she could easily toe walk, heel walk and do a deep knee bend. Cervical, dorsal and lumbar paraspinal muscles were soft with no evidence of hypertrophy or spasm and no sacroiliac joint or sciatic notch tenderness. Sensation was intact over all dermatomes of both lower extremities to light touch, pinprick and temperature. Seated straight-leg raising was negative. Dr. Wilson diagnosed lower back pain related to work activity, mild desiccation and diffuse bulged disc at L5-S1, age undetermined, unremarkable musculoskeletal examination with no current evidence of radiculitis, radiculopathy or muscle spasm and exogenous obesity. In answer to specific Office questions, he advised that appellant had residuals of a lumbar strain complicated by general deconditioning and exogenous obesity, and had no current disability and had no periods of temporary total disability as a result of the May 28, 2008 employment injury. Dr. Wilson advised that because of her size and general deconditioning she could not return to patient care that required heavy lifting but that this was due to her functional deconditioning and exogenous obesity, noting that there were no objective findings on his examination. He advised that no further treatment was necessary other than self-directed exercises. In an attached work capacity evaluation, Dr. Wilson advised that appellant could not return to her usual job, that maximum medical improvement had been reached, and provided permanent restrictions of one hour of twisting, bending, stooping, squatting, kneeling and climbing; three hours of pushing and pulling; and two hours of lifting, with a 30-pound restriction on pushing and pulling, and a 20-pound restriction on lifting.

Appellant submitted Dr. Hunter's handwritten treatment notes dated from July 1 to October 9, 2008 in which he described her complaints, physical findings and treatment that

⁴ The minimal restriction was 7.8 pounds for above the shoulder on the left.

included pain medication and continued physical therapy. On November 3, 2008 the Office proposed to terminate appellant's compensation benefits on the grounds that Dr. Wilson advised that she had no current disability related to the May 28, 2008 employment injury and that, while she could not return to her date-of-injury job, the restrictions he provided were due to her deconditioning and exogenous obesity rather than to the work injury. By decision dated December 11, 2008, the Office finalized the termination of compensation benefits.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that the claimant no longer has residuals of an employment-related condition, which requires further medical treatment.⁷

ANALYSIS

The Board notes that the issue of appellant's entitlement to wage-loss compensation has been adjudicated separately by the Office and is not at issue in this case.⁸ Regarding entitlement to medical benefits, the Office found that the weight of the medical evidence, which was represented by Dr. Wilson's October 8, 2008 report, established that the accepted medical conditions of lumbar sprain, lumbar L5 radiculopathy and lumbar L5 disc bulge had ceased or were no longer causally related to the May 28, 2008 employment injury. The Board, however, finds that the medical evidence is insufficient to establish that appellant no longer had residuals of her employment-related conditions as of December 11, 2008.

On August 27, 2008 Dr. Hunter noted that appellant had failed to progress in recovery from the May 28, 2008 employment injury and noted continued treatment with physical therapy and medication. He continued to advise that she needed this treatment through his October 9, 2008 report. Dr. Wilson, the Office referral physician, advised that appellant could not return to her usual job and provided restrictions to her physical activity. While he advised that the restrictions were due to her functional deconditioning and exogenous obesity, noting that there were no objective findings on her physical examination, he also diagnosed pain related to work activity and diffuse disc bulge at L5-S1, and a disc bulge at L5 is accepted as employment related. Dr. Wilson did not explain why this disc bulge was no longer caused by appellant's employment injury or further explain why she needed no further care for her accepted

⁵ *Jaja K. Asaramo, supra* note 1.

⁶ *Id.*

⁷ *E.J.*, 59 ECAB ____ (Docket No. 08-1350, issued September 8, 2008).

⁸ *Supra* note 1.

conditions. There is, therefore, insufficient medical evidence to establish that appellant had no residuals of the May 28, 2008 employment injury.⁹

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate appellant's medical benefits effective December 11, 2008.

ORDER

IT IS HEREBY ORDERED THAT the December 11, 2008 decision of the Office of Workers' Compensation Programs be reversed.

Issued: November 25, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁹ See *Donald T. Pippin*, 54 ECAB 631 (2003).